Before the
Federal communications Commission
Washington, D.C. 20554

In the matter of	)	
	)	WC Docket No. 02-356
National Exchange Carrier Association, Inc. Tariff FCC No. 5, Transmittal No. 952	)	
	)	
	)	

ORDER

Adopted: November 8,2002 **Released: November 8,2002**

Direct Case Due by: December 2,2002
Oppositions to Direct Case Due by: December 16,2002
Rebuttal Due by: December 23,2002

By the Chief, Pricing Policy Division:

I. INTRODUCTION

1. In this order, we designate for investigation, pursuant to sections 204 and 205 of the Communications Act of 1934, as amended (the Act),[1] certain issues regarding the rates, terms, and conditions in tariff Transmittal No. 952 that the National Exchange Carrier Association, Inc., (NECA) filed to become effective September 14,2002.[2] We suspended Transmittal No. 952 for five months on September 13, 2002, and initiated this investigation.[3] Transmittal No. 952 increases NECA's interstate revenue requirement to reflect provision for higher uncollectibles, resulting in higher traffic sensitive switched and special access recurring rates. As discussed below, we designate for investigation issues relating to the increased rates proposed in tariff Transmittal No. 952 to ensure that they are not unjust or unreasonable in violation of section 201 of the Act.[4]

II. BACKGROUND

2. A brief overview of the Commission's policies concerning security deposits and treatment of uncollectibles would be useful to the discussion of the issues presented by the present tariff revisions. Existing incumbent local exchange carrier (LEC) interstate access tariffs

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[1] 47 U.S.C. §§ 204 and 205.

[2] National Exchange Carrier Association, Inc., Tariff FCC No. 5, Transmittal No. 952 (Aug. 30, 2002)

[3] ***National Exchange** Carrier Association, Inc., Tariff FCC **No. 5, Transmittal No. 952,*** Order, DA 02-2263 (WCB/Pricing, released Sept. 13,2002).

[4] 47 U.S.C. § 201.

contain protections for uncollectibles. In 1984, the Commission rejected incumbent LECs' proposed security deposit tariff language and instead permitted dominant LECs to require security deposits from: (1) those carriers that have a proven history of late payments to the LEC; and (2) those carriers that have no established credit.[5] These provisions since have become a standard term in interstate access tariffs.[6] In 1987, the Commission addressed a BellSouth proposal to reduce the notice it must give to terminate service for nonpayment to 15 days from 30 days. The Commission allowed a 15-day notice period only if the customer received its bill within three days after the billing date.[7]

3. The Commission's ratemaking policies for incumbent LECs also account for interstate uncollectibles and provide for their recovery through interstate access charges. For rate-of-retum carriers, uncollectibles are reflected in the rate base that they use to calculate the 11.25 percent allowed rate of return. An increase in uncollectibles will result in higher rates the following year. Upon a proper showing of an extraordinary rise in uncollectibles, rate-of-return carriers may file mid-term corrections to raise their rates to target an 11.25 percent rate of return.[8]

4. In this filing, NECA is increasing the uncollectible portion of the traffic sensitive test period revenue requirement in its 2002 Annual Access Tariff filing to $15 million.' This would increase the traffic sensitive switched and special access recurring rate elements in its interstate access tariff by 2.13 percent." NECA states that it has observed an increase in uncollectibles in the first half of 2001 that is unprecedented in its history." NECA adds that the $15,000 amount included in the traffic sensitive revenue requirement underlying its 2002 Annual Access Tariff Filing is "grossly inadequate" to cover increasing uncollectibles.[12] On September 6, 2002, Sprint Corporation (Sprint), AT&T Corp. (AT&T), and General Communication, Inc. (GCI), filed petitions to reject, or, in the alternative, to suspend and investigate NECA's tariff.[13] On

5 *Investigation of Access and Divestiture Related Tariffs*, Phase I Order, CC Docket No. 83-1145, 97 FCC 2d 1082, 1169 (1984).

6 In general, existing tariffs also provide that deposits may not exceed the actual or estimated rates and charges for service for a two-month period.

7 *Annual 1987 Access Tariff Filings*, Memorandum Opinion and Order, 2 FCC Rcd 280, 304-05 (1987). BellSouth apparently never implemented this provision.

8 ***See*** 47 C.F.R. § 69.3(b).

9 National Exchange Carrier Association, Inc., Tariff FCC No. 5, Transmittal No. 952 at 3 (filed Aug. 30, 2002). ***See*** *also* National Exchange Carrier Association, Inc., Tariff FCC No. 5, Transmittal No. 939 (filed June 17, 2002) (*NECA 2002 Annual **Access** Tariff Filing*).

10 In the same transmittal, NECA also would delete outdated material relating to Digital Suhscriher Line (DSL) service. Those revisions were not the subject of the suspension order.

11 National Exchange Carrier Association, Inc., Tariff FCC No. 5, Transmittal No. 952 at 2.

12 ***Id.*** at **3**

13 National Exchange Carrier Association, Inc., Tariff FCC No. 5, Transmittal No. 952, Petition of Sprint to Reject or Alternatively Suspend and Investigate (Sept. 6, 2002) (*Sprint Petition*); AT&T Petition to Rcjcct or Suspend and Investigate (Sept. 6, 2002) (*AT&T Petition*); Petition of General Communication, Inc. io Reject or Alternatively to Suspend and Investigate (Sept. 6, 2002) (*GCI Petition*).

September 12, 2002, NECA filed its reply.[14]

III. ISSUE DESIGNATED FOR INVESTIGATION

A. Reasonableness of the Proposed Increased Allowance for Uncollectibles

1. Background

5. Petitioners question whether NECA has provided sufficient cost support for its proposed increase and satisfied the requirements of section 61.38 of the Commission's rules.[15] They further question whether NECAs revision is reasonable in light of existing protections against uncollectibles in its current tariff, its record of earning in excess of its established rate of return, and the possibility that some or all of any uncollectible amounts may be recovered under bankruptcy law.[16] Finally, GCI questions whether NECA's revisions constitute impermissible retroactive ratemaking.[17]

2. Discussion

6. The issue designated for investigation is whether the increased allowance for uncollectibles and the resulting increase in interstate access rates are just and reasonable within the meaning of section 201(b) of the Act. The interstate access market has two distinct characteristics – carriers participating in the NECA tariff must provide access services to interexchange carriers (IXCs) and competitive LECs requesting such service, and those carriers must use access services provided by carriers participating in the NECA tariff to originate or terminate many of their interstate calls. The revisions raise the question whether circumstances have changed so as to warrant increasing the allowance for uncollectibles in establishing interstate access charges. We therefore direct NECA to respond to the matters discussed below and provide the requested information in its direct case.[18] Nonetheless, NECA may, as part of its direct case, seek to justify its increase in the allowance for uncollectibles and the resulting higher interstate access charges.

7. The increased security deposits proposed by NECA in Transmittal No. 951 appear to address the same risk as the increase in traffic-sensitive and special access rates proposed in the present transmittal to reflect a higher allowance for uncollectibles. NECA shall address why both forms of relief are necessary, or what modifications to either form of relief could be made if the other proposed tariff revision were allowed to take effect.

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[14] National Exchange Carrier Association, Inc., Tariff FCC No. 5, Transmittal No. 952, Reply of National Exchange Carrier Association, Inc. (Sept. 13,2002). Verizon also filed "reply comments." Reply Comments of Veriron to Petitions to Reject or Suspend and Investigate NECA's Tariff (filed Sept. 12,2002).

[15] 47 C.F.R.§ 61.38. *See Sprint Petition* at 2; *AT&T Petition* at 6; *GCI Petition* at 2, 3-4.

[16] *See, e.g., AT&T Petition* at 5-6, *GCI Petition* at 5-7.

[17] *GCI Petition* at 4-5.

[18] Because the issues presented in this tariff investigation are closely related to those raised in connection with NECA's Transmittal No. 951, which has also been suspended, we may use data submitted in response to the designation of issues relating to that transmittal in resolving this investigation. *National Exchange Carrier Associafion, Inc., Tariff FCC No. 5, Transmittal No. 951,* WC Docket No. 02-340, Order, DA 02-2948 (WCB/Pricing, released Oct. 31, 2002).

8. As part of its direct case, NECA shall explain the derivation of the $15 million projection of uncollectible interstate access revenues for the NECA traffic-sensitive pool for the current tariff period. NECA shall provide a quantitative economic analysis of uncollectible amounts from an historical perspective, as well as an analysis of current telecommunications market conditions. NECA shall provide all internal and external studies created or relied upon to make the estimates or evaluation of risk assessment. NECA should explain its analysis of the risk of default among its customers – is the $15 million designed to cover the default of several smaller customers or one or two bigger ones? NECA should also address the factors that lead it to believe that $15 million is the appropriate allowance for uncollectibles for the current tariff period. NECA shall, in particular, explain how the two bankruptcies it cites, Global Crossing and WorldCom, can provide a basis for determining any future uncollectible levels.

9. As part of its direct case, NECA shall explain why it believes that its current rates, filed in June, do not adequately compensate its carrier participants for the risk of uncollectibles. Those rates included a $15,000 revenue requirement component for uncollectible debts.[19] As we did in the investigation of Transmittal No. 951, we direct NECA to submit the level of uncollectible debts from interstate access services and the actual retum on investment for the years 1990 to the present. For the period from January 2000 to July 31,2002, NECA shall also provide the totals of each of the individual defaults grouped into the following ranges: less than $100,000; $100,001-250,000; $250,001-$500,000; $500,001-$1,000,000; and more than $1,000,000. For each range, NECA shall indicate the number of defaulting entities. NECA shall then address whether the variation in uncollectible levels for 2000 and 2001 is merely a normal fluctuation in uncollectibles, which would be covered by the business risks anticipated in the 11.25 percent authorized rate of return, or whether it reflects some long term trend that warrants increasing the allowance for uncollectibles in the calculation of NECA's interstate revenue requirement. NECA shall also indicate the total dollar amount of security deposits held by its carrier participants that are attributable to interstate access services and the percentage relationship of that amount to average monthly interstate access billings.

10. To assist LIS in evaluating the market, NECA shall provide the following data on the distribution of its revenues for calendar year 2001. NECA shall indicate the share of its revenues that come from each of the following types of customers: IXCs, competitive LECs, other incumbent LECs through arrangements such as meet-point billing, and businesses. NECA shall also indicate the extent to which carriers participating in the NECA tariff have a debtor relationship with their customers and how that may affect those carriers' credit risk, *e.g.*, through offset in a bankruptcy proceeding.

11. Because uncollectibles can be affected by whether services are billed in advance or in arrears, NECA shall indicate which services in its interstate access tariff, including the subscriber line charge and other common line services, are billed in advance and those that are billed in arrears. It shall indicate the percentage of interstate billings that are billed in advance, how this level has changed over the past five years, and how this change has affected the risk faced by carriers participating in the NECA tariff, NECA shall also provide data covering the period from January 1, 2001, to June 30,2002, on the percentage of revenues in default that are attributable to services billed in arrears and the percentage attributable to special access services. Using its current tariff provisions, NECA shall describe the number of days of billings that would be at

[19] National Exchange Carrier Association, Inc., 'Tariff FCC No. 5, 'Transmittal No. 952 at **3**

risk when a NECA carrier terminates service for failure to pay for services that are billed in arrears and for services that are billed in advance. NECA should indicate the amount of unpaid bills of defaulting customers that have gone into bankruptcy since January 2000 and the percentage of that amount that has been recovered through bankruptcy proceedings.

12. If NECA believes that the risk of uncollectible debts has increased permanently, it should explain what accounts for this change, *e.g.*, the general economic climate or some structural change in the market. If the change is a structural one, are there methods other than the NECA proposal to increase the allowance for uncollectibles that would adequately address this additional risk, *e.g.*, is there a subset of carriers that can be identified that are the major cause of the increased risk? NECA should also discuss any other steps, other than those proposed in Transmittal Nos. 951 and 952, it might take to mitigate the risk. For example, could it adopt some form of advance payment for services currently billed in arrears and, if so, what modifications to its tariff and billing programs would be necessary? How difficult would it be to implement such changes? Finally, we direct NECA to address whether there are means other than including an allowance for uncollectibles in its revenue requirement calculation that might address the concern that NECA might oveream because its realized rate of retum would increase by the difference between the allowance and the amount of the actual uncollectibles if the uncollectibles do not occur.[20]

13. We direct NECA to describe how the timing of reporting uncollectibles to the pool is handled, especially in light of the two-year window within which a participating LEC may file revised cost data with the pool. NECA shall describe how it addresses defaults occurring before the effectiveness of any tariff to ensure that any tariff revisions are not designed to recover retroactively losses due to earlier nonpayment events (*i.e.*, how does NECA avoid retroactive ratemaking?).

IV. PROCEDURAL MATTERS

A. Filing Schedules

14. This investigation is designated WC Docket No. 02-356. The National Exchange Carrier Association, Inc., is designated a party to this investigation. NECA shall file its direct case no later than December 2,2002. The direct case must present NECAs position with respect to the issues described in this Order. Pleadings responding to the direct case may be filed no later than December 16,2002, and must be captioned "Oppositions to Direct Case" or "Comments on Direct Case." NECA may file a "Rebuttal" to oppositions or comments no later than December 23,2002.

15. An original and four copies of all pleadings shall be filed with the Secretary of the Commission. In addition, parties shall serve with three copies: Pricing Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-A104, Washington, D.C. 20554, Attn: Julie Saulnier. Parties shall also serve with one copy: Qualex International, Portals 11,445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 863-2893. Members of the general public who wish to express their views in an informal manner regarding the issues in this investigation may do so by submitting one copy of their comments to the Office of the Secretary,

[20] *See, e.g.*, AT&T **Petition** at **6-8.**

Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554. Such comments should specify the docket number of this investigation, WC Docket No. 02-356. Parties are also strongly encouraged to submit their pleadings via the Internet through the Electronic Comment Filing System at <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number, which in this instance is WC Docket No. 02-356. Parties may also submit an electronic comment via Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to <ecfs@fcc.gov>, and should include the following words in the body of the message: "get form <your e-mail address>." A sample form and directions will he sent in reply. Finally, an e-mail of the direct case, oppositions/comments, and replies should be sent to parties to the proceeding and to Julie Saulnier at jsaulnie@fcc.gov. For this purpose, NECA shall treat the parties petitioning against Transmittal No. 952 as parties to whom an e-mail should be sent.

16. Interested parties who wish to file comments via hand-delivery are also notified that effective December 18, 2001, the Commission will only receive such deliveries weekdays from 8:00 a.m. to 7:00 p.m., via its contractor, Vistronix, Inc., located at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. **The Commission no longer accepts these filings at *9300* East Hampton Drive, Capitol Heights, MD 20743.** Please note that all hand deliveries must be held together with rubber bands or fasteners, and envelopes must be disposed of before entering the building. In addition, this is a reminder that as of October 18, 2001, the Commission no longer accepts hand-delivered or messenger-delivered filings at its headquarters at 445 12th Street, SW, Washington, DC 20554. Messenger-delivered documents (*e.g.*, FedEx), including documents sent by overnight mail (other than United States Postal Service (USPS) Express and Priority Mail), must be addressed to 9300 East Hampton Drive, Capitol Heights, MD 20743. This location is open weekdays from 8:00 a.m. to 5:30 p.m. USPS First-class, Express, and Priority Mail should be addressed to the Commission's headquarters at 445 12th Street, SW, Washington, DC 20554. The following chart summarizes this information:

TYPE OF DELIVERY	**PROPER DELIVERY ADDRESS**
Hand-delivered paper filings	236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002 (Weekdays - 8:00 a.m. to 7:00 p.m.)
Messenger-delivered documents (*e.g.*, FedEx), including documents sent by overnight mail (this type excludes USPS Express and Priority Mail)	9300 East Hampton Drive, Capitol Heights, MD 20743 (Weekdays - 8:00 a.m. to 5:30 p.m.)
USPS First-class, Express, and Priority Mail	445 12th Street, SW Washington, DC 20554

Ex Parte Requirements

18. This investigation is a permit-but-disclose proceeding and is subject to the requirements of section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b), as revised. Persons making oral exparte presentations are reminded that memoranda summarizing the presentations must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required." Other rules pertaining to oral and written presentations are also set forth in section 1.1206(b).

19. Interested parties are to file any written *ex parte* presentations in this proceeding with the Commission's Secretary, Marlene Dortch, 445 12th Street, S.W., TW-B204, Washington, D.C. 20554, and serve with three copies: Pricing Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-A104, Washington, D.C. 20554, Attn: Julie Saulnier. Parties shall also serve with one copy: Qualex International, Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 863-2893.

Paperwork Reduction Act

20. This order designating issues for investigation contains no new or modified information collections subject to the Paperwork Reduction Act of 1995, Pub. Law 104-13,

ORDERING CLAUSES

21. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 4(i), 4(j), 201-205, and 403 of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 201-205, and 403, and pursuant to the authority delegated by sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, the issues set forth in this Order ARE DESIGNATED FOR INVESTIGATION.

22. IT IS FURTHER ORDERED that the National Exchange Carrier Association, Inc., SHALL BE a party to this proceeding.

23. IT IS FURTHER ORDERED that the National Exchange Carrier Association, Inc., SHALL INCLUDE, in its direct case, a response to each request for information that it is required to answer by this Order.

FEDERAL COMMUNICATIONS COMMISSION

Tamara L. Preiss
Chief, Pricing Policy Division
Wireline Competition Bureau

[21] *See* 47 C.F.R. §1.1206(b)(2), asrevised.